IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.981 of 2002 and C.A.No.986 of 2002

Murugan @ Settu .. Appellant in
CA 981/02

1. Ramalingam @ Ramu
2. Siva .. Appellants in
CA 986/02

-Vs-

State rep. by
Inspector of Police
B-1, Siva Kanchi Police Station
Kanchipuram (Cr. No.486/98) .. Respondent in
both appeals

Both the criminal appeals are preferred under S.374 of Cr.P.C.
against the conviction and sentence passed by the Additional Sessions Judge,
Kanchipuram (Fast Track Court) in S.C.No.30 of 2000 dated 24.6.200 2.

For Appellants : Mr.Kanchi G.V.Mathiazhagan

For Respondent : Mr.N.Arul,
Government Advocate (Crl.Side)

:COMMON JUDGMENT

This judgment shall govern both the appeals in C.A.Nos.981 and 986 of
2002. The former appeal was made by A-1 while the latter made by A-2 and A-3.
2. The appellants, who stood charged and tried for the offences under
Ss 366 and 376 of I.P.C. in respect of A-1 and Ss 366, 366 r/w 109 and 376
r/w 109 of I.P.C. in respect of A-2 and A-3 have brought forth these two
appeals against the conviction and sentence imposed on them by the lower
Court.
3. The brief facts necessary for the disposal of these appeals are:
(a) P.W.4 Shankari the young victim aged about 14 years, the daughter
of P.W.1 Ekambaram and P.W.15 Parimala was doing her VIII Standard in S.S.K.V.
School, Kancheepuram during the relevant period. On 11.2 .98 at about 9.00
A.M., A-1 with an intention of marrying her, went to the School in M.O.1 auto
and informed her that her mother P.W.15 was admitted in the hospital. She
immediately informed her Class Teacher examined as P.W.5 Rajeswari and

proceeded with A-1 in the auto. She was brought to Kamatchiamman Temple by A-1 in the said auto and made her wait for 15 minutes. Thereafter, A-1 accompanied by A-2 took her on 11.2.98 at 1.00 P.M. to the house of A-2's grandmother P.W.7 Logammal, which is situate at Kaliampoondi. P.W.4 when questioned the same, both of them threatened him. Till the morning of 12.2.98, A-1 , A-2 and P.W.4 stayed in P.W.7's house. On 12th morning A-3 came there and joined the other accused. They compelled P.W.4 to marry A-1. Accordingly, A-1 tied a thali to P.W.4. Then, they took P.W.4 to Vellore, and from there, A-1 and A-3 took P.W.4 to Bangalore leaving A-2 at Vellore. On 13th, A-1, A-3 and P.W.4 reached Bangalore and took her to the house of A-3's sister P.W.9 Rajeswari situate at Pudhuvijayaraghavapuram. P.W.4 was kept from 13.2.98 till 24.2.98 in P.W.9's house. During the said period A-1 had forcible sexual intercourse on P.W.4 on number of occasions.

(b) At about 2 P.M. on 12.2.98, P.W.1 lodged a complaint under Ex.P1 . P.W.16 Kandan, Sub Inspector of Police, Kanchi Taluk Police Station, on the strength of Ex.P1 complaint, registered a case in Crime No.209/98 under 'girl missing'. Ex.P5 printed F.I.R. was sent to the concerned Judicial Magistrate's Court. P.Ws.1 to 3 were examined and their statements were recorded. Subsequently, the case was altered to S.366 of I.P.C. The alteration report was also sent to the concerned Court. On 24.3.98, P.W.19, Pugazhendhi, Inspector of Police, Kanchi Taluk Police Station took up investigation. He received the information that A-1 and P.W.4 were produced before the Court. P.W.19 proceeded to the Judicial Magistrate's Court, Kancheepuram and made a request for sending A-1 and P.W.4 for medical examination. On 25.3.98 P.W.18 Dr.Parasakthi examined P.W.4 victim girl and issued a medical certificate under Ex.P10. On examination, the Doctor found the sexual offences committed. On 26.3.98 P.W.20 Dr.Gururaj examined the accused and issued Exs.P14 and P15 certificates. He also examined P.W.4 and issued Ex.P16 age certificate.

(c) The Investigation Officer examined P.W.4 on 14.4.98. On the basis of the statement of the victim, the case was altered to Ss 366(A) and 376 of I.P.C. On 14.4.98 P.W.19 seized M.O.1 auto under Ex.P11 mahazar in front of two witnesses. On the same day on information he arrested A-2 and A-3 and recorded their confessional statements in front of the witnesses. At about 7.45 P.M., M.Os.2 and 3 (series), dresses and notebooks were recovered from A-2's tailoring shop under Ex. P12 mahazar. On the same day at about 8.00 P.M., on the basis of A-3's confessional statement, M.Os.4 and 5 letters were recovered from A-3 under Ex.P13 mahazar. On 15.4.98 A-2 and A-3 were sent for remand. M.Os.1 to 5 were submitted to the concerned J udicial Magistrate's Court under Form 95. On 30.4.98, the case was handed over to P.W.14 Sudarsan, Sub Inspector of Police, Siva Kanchi Police Station on the point of jurisdiction. P.W.14 on 26.5.98 registered a transferred case in Crime No.486/98 under Ss 366 and 376 IPC and prepared Ex.P4 printed F.I.R. and placed before P.W.21 Rajkumar, Inspector of Police for investigation. P.W.12 conducted further investigation, examined P. Ws.5, 6 and 11 and recorded their statements. On 2.4.99 he examined P.Ws.8 and 16 and recorded their statements. He examined further witnesses and P.Ws.18 and 20 Doctors and other witnesses also and recorded their statements. On completion of the investigation, the succeeding Officer of P.W.21 filed a charge sheet against the accused under Ss 366 and 376 of I.P.C.

4. In order to prove the charges against the accused, the prosecution

examined 21 witnesses and marked 17 exhibits and 5 material objects. On completion of the evidence of the prosecution, the accused were questioned under S.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. On the side of the defence, one Suresh, a photographer was examined as D.W.1 and 3 exhibits were marked. After hearing the rival submissions and scrutiny of the materials, the trial Court found A-1 guilty under Ss 363 and 376(1) of I.P.C., while it found A-2 and A-3 guilty under S.363 read with 109 of I.P.C. and sentenced A-1 to undergo 3 years R.I. under S.363 IPC and 7 years R.I. under S.376(1) IPC and A-2 and A-3 to undergo 3 years R.I. under S.363 r/w 109 IPC. Thus, these two appeals have arisen.

5. The learned Counsel advancing his arguments for the appellants in both the appeals interalia made the following submissions.

The prosecution has not proved that the appellants criminally intimidated P.W.4 the victim to give her consent to marry marry A-1. P.W.4 has not spoken anything regarding the marriage or the intention of the first accused to marry P.W.4 against her will. The prosecution has not proved that the first accused informed the accused that her mother was admitted in the hospital or the victim was taken out from the School. The evidence of P.W.20 Doctor and Ex.P16 age certificate would disclose that the age of the victim was more than 18 years, and thus, she was not a minor. A reading of Ex.D1 a letter, which was written by P.W.4 to the Police Officers in respect of her age difference and the wrong entries in the school certificates would clearly reveal that it was one out of her own accord, and in that regard, no one of the accused had any role to play. The prosecution relied on a birth certificate wherein the name of the victim was not given, and they have also relied on a School Certificate. It is nowhere found in the evidence, who was the author of the school certificate and the age given therein, and hence, the age of the victim could not be decided from those documents adduced. As per the evidence of P.W.18 Doctor who examined the victim and gave Ex.P10 wound certificate, there is nothing to indicate that she either sustained any injury in her body or in her private part. P.W.4 has disclosed that the accused were known to her already. P.W.19 was not empowered to investigate the case, which was out of his jurisdiction. All the independent witnesses examined by the prosecution have turned hostile, and thus, what is available for the prosecution was the testimonies of the interested witnesses. It is pertinent to note that the F.I.R. was lodged belatedly, but, the same was not explained by the prosecution in any manner. From the available evidence, it would be clear that P.W.4 out of love affair left from her house and not by compulsion of anybody. Under such circumstances, the lower Court should have outrightly rejected the case of the prosecution and acquitted them, and hence, in view of the submissions made, the appellants/accused are entitled for an acquittal in the hands of this Court.

6. Stoutly opposing all the contentions put forth by the appellants' side, the learned Government Advocate (Criminal Side) would submit that P.W.4 who was studying VIII Standard and aged 14 years, was on the misrepresentation that her mother was hospitalised, was taken away from the School in M.O.1 auto by A01, and she was from there taken to a temple, where A-2 joined with them, and from there, she was taken to Kaliampoondi where she was kept a day in the house of P.W.7, the grandmother of A-2; that on the next morning, A-3 joined with them; that leaving A-2, A-1 and A-3 took the victim to Bangalore, where

P.W.4 was kept in custody from 13.2.98 to 24.2.98 at the house of P.W.9, the sister of A-3, where she was sexually assaulted by A-1 on number of occasions; that they surrendered before the Court only on 24.2.98; that all these facts have been clearly spoken to by the victim, who has clearly narrated in her evidence; that it is true that the independent witnesses have turned hostile, but it is pertinent to point out that P.W.7 and P.W.9 are all either known to or close relations of the accused; that P.W.4 was subjected to medical test, and the Doctors have given wound certificates; that the Doctor who examined her medically has clearly given his opinion under Ex.P10 certificate that not only the hymen was ruptured, but the vagina admitted two fingers without pain; that this part of the medical evidence would clearly corroborate the evidence of the victim that she was sexually assaulted by A-1 in Bangalore in that interval of 12 days on number of occasions; that originally a case was registered for girl missing, and on coming to know that she was kidnapped, the case was subsequently altered to 366 of IPC and the investigation was on; that after they surrendered before the concerned Court, both A-1 and P.W.4 were subjected to medical examination, and on enquiry of P.W.4 and the perusal of the medical certificates issued in respect of the injuries found, the case was altered to 376 of IPC and proceeded with; that the lower Court has sufficient materials to hold that she was a minor and was not completed 18 years as evident from the radiological report that she was 18 years at the time of examination; that in view of the same, the lower Court was perfectly correct in finding that A-1 was guilty under Ss 36 3 and 376(1) of I.P.C. and A-2 and A-3 under S.363 read with 109 of I.P.C., and hence, the judgment of the lower Court has got to be sustained.

7. After careful consideration of the rival submissions made and close scrutiny of the entire materials, the Court is of the considered view that there is no substance in this appeal.

8. P.W.4, a young girl of 14 years, who was studying VIII Standard in S.S.K.V. School at Kancheepuram, was kidnapped from her School on 1 1.2.98 at 9.00 A.M. on the misrepresentation made by A-1 that her mother was not doing well. She was taken in an auto to Kamatchiamman Temple where A-2 joined with them. She was then taken to Kaliampoondi, the place where the house of the grandmother of A-2 was situate. They stayed there till next day morning namely 12.2.98, where A-3 also joined with them. From there A-1 and A-3 took her to Bangalore, leaving A-2, and all of them stayed in the house of P.W.9, the sister of A-3 till 24.2.98, and the sexual assault was committed by A-1 on her on number of occasions. P.W.1 has categorically given evidence in respect of all the above facts. Despite the cross examination in full, her evidence remained unshaken. P.W.5, the Class Teacher of P.W.4 has been examined as to the fact that P.W.4 got permission from her to leave from the class room on the reason that her mother was suddenly hospitalised. From her School, A-1 has taken her in M.O.1 auto which was clearly identified by P.W.4. Near Kamatchiamman Temple, she was made to wait for sometime, where A-2 has also joined. From that place, they have taken her to P.W.7's house at Kaliampoondi. Admittedly, P.W.7 was the grandmother of A-2, and hence, no one could expect her to speak anything about her grandson. P.W.7 has turned hostile. From the evidence of P.W.4, it would be clear that on 11.2.98 from 1.00 P.M. till next morning, they were staying in P.W.7's house. On 12 .2.98 A-3 has joined them and A-1 to A-3 have taken P.W.4 to Vellore. From Vellore, A-1 and A-3 have taken her to Bangalore by Bus, leaving A-2 at Vellore. At

Bangalore, A-1 has kept P.W.4 in the house of P.W.9, the sister of A-3. P.W.4 has categorically deposed to the fact that from the time they reached Bangalore on 13.2.98 till they left Bangalore on 24.2.98, she was subjected to sexual assault on number of occasions by A-1. Her evidence as spoken to above would clearly reveal that A-1 with the full assistance and abetment of A-2 and A-3 have kidnapped her from the lawful guardianship and had taken her to different places.

9. It is pertinent to note that on 12.2.98 itself, a complaint was lodged at 2.00 P.M. by P.W.1, on the strength of which, a case was registered by P.W.16 Sub Inspector of Police, Kanchi Taluk Police Station as one for girl missing. The printed F.I.R. was immediately despatched to the concerned Magistrate's Court. Then, the statements of witnesses were recorded. Thus, the Court is unable to notice any delay in lodging the complaint. Subsequently the case was altered to S.366 of I.P.C. After A-1 and P.W.4 surrendered before the Court, they were subjected to medical examination. P.W.18 Doctor Parasakthi examined P.W.4, the victim girl and has issued Ex.P10 medical certificate opining that her vagina admitted two fingers without pain and the hymen was absent. On 26.3.98 P.W.20 Dr.Gururaj examined the accused and issued Exs.P14 and P15 certificates. The medical evidence adduced through the Doctors and the medical certificates would clearly corroborate the evidence of P.W.4, the victim. The contention of the appellants' side that all the independent witnesses have turned hostile is of no consequence, since the evidence of the young victim is trustworthy and the same inspires the confidence of the Court, and apart from that, it is fully supported by the other evidence narrated above.

10. The main contention that was raised by the learned Counsel for the appellants was that in order to prove the age of the victim, the lower Court has relied on three documents namely Exs.P3, P16 and P17. Ex.P3 is the school certificate, while Ex.P17 is the birth certificate. Making a comment over the birth certificate, the learned Counsel would submit that it did not contain the name of the person; and that the victim had both elder and younger sisters. So far as the school certificate is concerned, the learned Counsel would contend that the author of the certificate was not known. Added further the learned Counsel that P.W.20 Doctor has given Ex.P16 certificate and has found through radiology test that she was 18 years old, and hence, she was not a minor. This contention has got to be thoroughly discountenanced. In the instant case, the school certificate of the victim has been filed along with the birth certificate. In the school certificate, the name of the girl along with the date of birth is given. P.W.1 the father and P.W.15 the mother of P.W.4 both have been examined. Both have clearly spoken to the fact as to the birth of P.W.4 and also as to when she was admitted in the school. The evidence of P.Ws.1 and 15 coupled with the date of birth of P.W.4 as found in the school certificate and the production of the school certificate, all would go to show that she was born on 30.3.1984, and hence, the lower Court was perfectly correct in relying on that part of the evidence to find that she was a minor on the date of the occurrence. The Court is of the firm opinion that there is no difficulty in coming to the conclusion that she was a minor at that time as spoken to by both P.W.1 and P.W.15.

11. In the light of the above, it has to be held that A-1 who was abetted by A-2 and A-3, has kidnapped a minor girl from the lawful guardianship on the alleged date of occurrence and had taken her to different

places, and A-1 has committed rape as spoken to by the victim P.W.4. There is no material available to indicate that A-1 at the time of kidnapping her committed the offences with an intention of marrying her, and hence, the lower court has found A-1 guilty under S.376(1) of I.P.C. and rightly too. The lower Court was also right in finding A-1 guilty under S.363 of IPC and A-2 and A-3 guilty under S.363 read with 109 of IPC. The Court does not find nothing to interfere in the conviction recorded by the lower Court.

12. Coming to the question of punishment, the trial Court has awarded 3 years R.I. to A-1 under S.363 of I.P.C. and 7 years R.I. under S.376(1) of I.P.C. The Court is unable to find anything to interfere in the sentence imposed on the first accused. So far as the sentence imposed on A-2 and A-3 is concerned, the lower Court has awarded 3 years R.I. under S.363 read with 109 IPC. In view of the facts and circumstances of the case, the Court is of the view that the reduction of the sentence from 3 years R.I. to 2 years R.I. as regards A-2 and A-3 would meet the ends of justice.

13. In the result, the criminal appeal in C.A.981/02 is dismissed, confirming the judgment of the lower Court in respect of A-1.

14. In the result, the sentence of 3 years R.I. imposed on A-2 and A-3 by the lower Court is modified, and the appellants/A-2 and A-3 in C.A.No.986/02 shall undergo 2 (two) years R.I. under S.363 read with 109 of I.P.C. In other respects, the judgment of the lower Court as regards A-2 and A-3 is confirmed. With the ab ove modification, the criminal appeal in C.A.No.986/02 is dismissed. The Sessions Judge shall take steps to commit the appellants/A-2 and A-3 to prison, if they are on bail, to undergo the remaining period of sentence.

Index: Yes
Internet: Yes

To:
1) The Additional Sessions Judge (Fast Track Court), Kancheepuram.
2) The Principal Sessions Judge, Chengalpattu.
3) The Superintendent, Central Prison, Cuddalore.
4) The Public Prosecutor, High Court, Madras.
5) The D.I.G. of Police, Chennai 4.
6) Mr.N.Arul, Government Advocate (Crl. Side), High Court, Madras.
7) The Inspector of Police, B1 Sivakanchi Police Station, Kancheepuram.

nsv/